

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE:

ROBERT E. DAVIS
MARY B. DAVIS

Debtors

Chapter 13
Case No. 18-35927-KRH

WILMINGTON TRUST, NATIONAL
ASSOCIATION, NOT IN ITS INDIVIDUAL
CAPACITY, BUT SOLELY AS TRUSTEE
FOR MFRA TRUST 2015-1

Movant

v.

ROBERT E. DAVIS
14200 KEY DEER DR.
MIDLOTHIAN, VA 23112

MARY B. DAVIS
14200 KEY DEER DR.
MIDLOTHIAN, VA 23112
(Debtors)

CARL M. BATES
P. O. BOX 1819
RICHMOND, VA 23218
(Trustee)

Respondents

MOTION FOR RELIEF FROM AUTOMATIC STAY

Wilmington Trust, National Association, not in its individual capacity, but solely as trustee for MFRA Trust 2015-1 (“Movant”) by undersigned counsel, respectfully moves this Honorable Court to terminate the Automatic Stay as to the real property located at 14200 Key Deer Drive, Midlothian, VA 23112 (“Property”), and, as grounds therefore, states as follows:

Hugh Green, Esq., Bar # 86687
Kathryn Smits, Esq., Bar # 77337
Heather D. McGivern, Esq., Bar # 91767
PO Box 2548
Leesburg, VA 20177
(703)777-7101

1. This proceeding seeking relief under 11 U.S.C. § 362(d) is a contested matter within the meaning of Fed. R. Bankr. P. 4001 and 9014, and this court has jurisdiction over this matter pursuant to 28 U.S.C. § 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G) and (b)(2)(O). Venue is proper pursuant to 28 U.S.C. § 1409(a).

2. On November 27, 2018, the above named Debtors, Robert E. Davis and Mary B. Davis ("Debtors"), filed in this court a Petition under Chapter 13 of the United States Bankruptcy Code. Carl M. Bates was appointed Chapter 13 Trustee.

3. On or about September 29, 2004, Robert E. Davis and Mary B. Davis (collectively the "Obligors") executed and delivered to C&F Mortgage Corporation a Note in the amount of ONE HUNDRED FORTY-FOUR THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$144,500.00), plus interest at the fixed rate of 6.375% per annum to be paid over thirty (30) years. A copy of the Note is attached as **Exhibit A** and incorporated herein.

4. To secure the repayment of the sums due under the Note, Robert E. Davis and Mary B. Davis executed and delivered to C&F Mortgage Corporation a Deed of Trust dated September 29, 2004, encumbering the real property ("Property") described as:

ALL that certain lot, piece or parcel of land with the improvements thereon and appurtenances thereto belonging, lying and being in the Matoaca Magisterial District, of Chesterfield County, Virginia, known, numbered and designated as Lot 15, Block F, Section 4, Deer Run, as shown on a plat of subdivision made by E.D. Lewis & Associates, entitled "Deer Run-Section 4" dated January 3, 1989 and recorded September 6, 1989, in the Clerk's Office of the Circuit Court of Chesterfield County, Virginia, in Plat Book 67, pages 82-83, to which plat reference is hereby made for a more particular description of the property.

BEING the same real estate conveyed to Mary Beth Trueman and Robert E. Davis, by Deed from C. Leigh Crumpler, dated September 27, 2004, recorded in the Clerk's Office, Circuit Court, Chesterfield County, Virginia simultaneously herewith.

which has the address of 14200 Key Deer Drive, Midlothian, VA 23112. The Deed of Trust was recorded in the Clerk's Office of Chesterfield on October 4, 2004. A copy of the Deed of Trust is attached as **Exhibit B** and incorporated herein.

5. The Note and Deed of Trust were later transferred to Movant and Movant is the current holder of the Note and Deed of Trust. A copy of the Assignment is attached as **Exhibit C** and incorporated herein.

6. The Debtors agreed to permanent modifications of the loan described above. The loan modifications are attached as **Exhibit D** and incorporated herein.

7. As of April 22, 2019, the Debtors owe an unpaid principal balance of \$146,970.30 under the Note, plus additional accruing interest, late charges, attorneys' fees and costs.

8. As of April 22, 2019, the Debtors are post-petition due for December 1, 2018, which includes the following missed payments:

| Number of Missed Payments | From | To | Payment Amount | Total Due |
|---------------------------|------------------|---------------|----------------|------------|
| 5 | December 1, 2018 | April 1, 2019 | \$1,076.48 | \$5,382.40 |
| Suspense: | | | | (\$0.00) |
| Total Payments Past Due: | | | | \$5,382.40 |

9. The value of the property is \$191,500.00, according to the Debtors' Schedule "A".

10. The Debtors are in default under the Note.

11. The Debtors have not and cannot offer Wilmington Trust, National Association, not in its individual capacity, but solely as trustee for MFRA Trust 2015-1 adequate protection of its interest in the Property, and Wilmington Trust, National Association, not in its individual capacity, but solely as trustee for MFRA Trust 2015-1 avers it is not adequately protected.

12. That the Debtors' account delinquency constitute cause for relief from the automatic stay.

WHEREFORE, Wilmington Trust, National Association, not in its individual capacity, but solely as trustee for MFRA Trust 2015-1 prays that this Court issue an order terminating or modifying the Automatic Stay under 11 U.S.C. § 362, as to the property located at 14200 Key Deer Drive, Midlothian, VA 23112, and granting the following:

a. Relief from the Automatic Stay allowing Movant to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property and/or allowing Movant, through its agents, servicers and representatives to contact Debtors and/or Debtors' counsel for the purpose of engaging in discussions and consideration for possible loss mitigation options, solutions and/or resolutions with regard to the underlying mortgage and note, including, but not limited to loan modification, deed in lieu or other loss mitigation alternatives.

b. That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

c. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.

d. That it be exempted from further compliance with Fed. R. Bankr. P. 3002.1 in the instant bankruptcy case.

e. For such other relief as the Court deems proper.

Date: 5/20/2019

Respectfully submitted,

/s/ Heather D. McGivern

Hugh Green, Bar #86687

Kathryn Smits, Bar #77337

Heather D. McGivern, Bar #91767

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Attorneys for Wilmington Trust, National
Association, not in its individual capacity, but
solely as trustee for MFRA Trust 2015-1

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CERTIFICATE OF SERVICE

The undersigned states that on May 20, 2019, copies of the foregoing Motion for Relief from Automatic Stay were filed with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

Carl M. Bates
P. O. Box 1819
Richmond, VA 23218
station01@richchap13.com
Bankruptcy Trustee

and I hereby certify that I have caused to be mailed by first class mail, postage prepaid, copies of the foregoing Motion for Relief from Automatic Stay to the following non-ECF participants:

Robert E. Davis
14200 Key Deer Dr.
Midlothian, VA 23112
Debtor

Mary B. Davis
14200 Key Deer Dr.
Midlothian, VA 23112
Debtor

/s/ Heather D. McGivern
Hugh Green, Esquire
Kathryn Smits, Esquire
Heather D. McGivern, Esquire